

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

AUTHORIZED TAXICAB SUPERVISION, INC.
Employer

and

Case No. 31-RC-8792

CALIFORNIA PUBLIC, PROFESSIONAL & MEDICAL
EMPLOYEES UNION, TEAMSTERS LOCAL 911
Petitioner

DECISION AND DIRECTION OF ELECTION

On February 17, 2010, the California Public, Professional & Medical Employees Union, Teamsters Local 911 (Local 911 or Petitioner) filed petition 31-RC-8792 under Section 9(c) of the National Labor Relations Act, as amended, seeking to represent a unit of dispatchers, clerical employees¹ and maintenance employees employed by Authorized Taxicab Supervision, Inc. (ATS or Employer) working at Los Angeles International Airport.

On March 8, 2010, a hearing was held on the referenced petition. The sole issue presented at the hearing was whether ATS is an employer within the meaning of Section 2(2) of the National Labor Relations Act (Act). ATS contends that it is a political subdivision of the State of California because it is administered by individuals who are responsible to public officials and, therefore, ATS is exempt from the definition of employer in Section 2(2) of the Act. Local 911 contends that ATS is an employer within the meaning of Section 2(2) of the Act.

¹ On the record, Petitioner revised the petition to include cashiers and not to include clerical employees.

For the reasons set forth in Section V below, I conclude that ATS is an employer as defined in Section 2(2) of the Act.

I. HEARING OFFICER RULINGS: The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

II. JURISDICTION: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.²

III. LABOR ORGANIZATION: The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

IV. QUESTION CONCERNING COMMERCE: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

V. APPROPRIATE UNIT: The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time dispatchers, cashiers, and maintenance employees employed by the Employer at its facility located at Los Angeles International Airport.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

² The Employer, Automated Taxicab Supervision, Inc., is a California corporation with a place of business located at Los Angeles International Airport (LAX) where it provides services to the Department of Airport for the City of Los Angeles in excess of \$50,000 by virtue of a contract it has with the City of Los Angeles to provide said services.

In analyzing the issues in this case, I will first provide a brief overview of the Employer's structure and operations. I will then specifically discuss the issue presented.

A. Organizational Structure and Background of ATS

Authorized Taxicab Supervision, Inc. (ATS) is a nonprofit corporation that is a joint venture between eight taxi companies and independent associations (co-ops) that have been granted franchises from the Los Angeles City Council to provide taxicab transportation at LAX. ATS' purpose is to supervise taxicab activities at LAX by ensuring that taxicabs picking up passengers from LAX follow the airport's rules and regulations.

Before there was any organization regulating taxicabs at LAX, taxicab drivers would speed around the terminal racing each other to try to obtain fares. At times drivers would get into fist fights over passengers. In response, LAX decided that something had to be done to bring the situation under control. For a period of years, LAX contracted with a for-profit company called Authorized Taxicab Management, Inc. to regulate taxicabs at LAX.

About 1991, Landside Operations Bureau (a division of the City of Los Angeles Department of Airports) decided that taxicabs should be regulated by a new nonprofit entity that would have no shareholders and whose only function would be to regulate taxicabs at LAX.³ The City Attorney for LAX contacted the Steve Neiman and Behzab Bitaraf, Authorized Taxicab Management's attorney and General Manager, respectively, and told them that it wanted a nonprofit corporation to be formed to perform the work then being performed by Authorized Taxicab Management. The City Attorney for LAX discussed with them how the City wanted ATS to be structured and run. ATS' attorney drafted bylaws and submitted them to the City Attorney for LAX for approval; me made several revisions to the bylaws at the City's behest. Once the City Attorney for LAX

³ While referred to at different times by witnesses as Landside Management or Landside, I will refer to this entity as it is referred to in ATS' bylaws.

was satisfied with the bylaws for ATS, they were finalized and the City of Los Angeles Department of Airports entered the first of a series of five-year operating agreements for ATS to regulate taxicabs at LAX.⁴

As mandated in its bylaws, ATS currently has eight members -- the eight taxi companies and independent associations that are authorized by the Los Angeles City Council to originate taxi transportation from LAX (i.e., pick up passengers at the airport).⁵ The bylaws require that the Board of Directors consist of the president of each of its members. If a licensed taxicab company or independent association were to lose its license, that entity would lose its membership in ATS and the term of that entity's president on ATS' Board of Directors would terminate.⁶ In the event that a new company or association obtains a license from the City to originate taxi transportation from LAX, such entity is eligible for membership in ATS and to have its president serve on the Board of Directors.⁷ A few years ago, the City did not renew the franchise for one ATS member, Valley Cab, and instead granted the franchise to another company, City Cab. As a result, Valley Cab lost its membership in ATS and its president was removed from the Board of Directors. City Cab became a member of ATS and its president became a Director on ATS' Board.

ATS is currently a signatory to an Operating Agreement with the City of Los Angeles Department of Airports with a term from April 1, 2006 through March 31, 2011. Either party can cancel the agreement with 30 days advance written notice. The terms of the Operating Agreement were drafted and presented to ATS by the City Attorney and ATS did not have any input into the terms of that agreement. Under the Operating Agreement, ATS is responsible for providing supervision services to and for those

⁴ In its brief, ATS refers to the entity as LAWA based upon information on a website that is not a part of the record and was therefore not considered.

⁵ While any taxicab can drop passengers off at LAX, only taxicabs from specifically licensed companies or independent associations may lawfully pick up passengers at LAX.

⁶ No evidence was presented regarding the process by which the Los Angeles City Council determined which companies or co-ops would be authorized (or would lose their authorization) to pick up passengers at LAX.

⁷ According to ATS' bylaws, eligible entities that fail to become a member of ATS risk losing their license from the City.

taxicab companies and/or associations which are franchised by the City of Los Angeles to originate fares at LAX. More specifically, ATS is required to ensure that franchised taxicab services at LAX “are conducted orderly, legally, fairly, honestly, responsibly, and in accordance with all City approved operating rules promulgated by the franchised taxicab industry and the City of Los Angeles.” The Operating Agreement further provides that ATS’ personnel are “not empowered or authorized to officially represent City’s Department of Airports or Transportation.” By the express terms of the Operating Agreement, ATS “is in no respect to be considered an officer, employee or agent of City by reason of this Agreement.” Rather, ATS acts as the “agent” of the taxi companies and associations that are authorized to conduct business at LAX.

B. Overview of ATS’ Operations

Section 4 of the Operating Agreement contains operating guidelines for which ATS is responsible, including required hours and minimum staffing levels for the holding lot booth, central terminal taxi stands, and patrol. ATS is also responsible for inspecting taxicabs and drivers prior to dispatching them to taxicab stands for cleanliness, hubcaps, body damage, permits and decals and for keeping written records of the inspections. ATS is also allowed to operate a car wash for the taxicabs, and it does so, but is not allowed to charge for the carwash service. ATS is empowered to deny airport access to any taxicab for failure to comply with the rules and regulations of the Department of Transportation or Airports. Before denying a driver access to LAX for failing to comply with the Airport’s rules and regulations, a hearing must be held.

ATS currently employs approximately 71 employees. Those outside of the unit sought by the Petitioner consist of the general manager; one assistant general manager; fifteen supervisors/managers; and three clerical employees. The ATS employees included in the petitioned-for unit include approximately 42 dispatchers, six maintenance employees and six cashiers.

According to the bylaws, General Manager Bitaraf is responsible for, among other things, operating ATS in accordance with rules and regulations promulgated by the Board of Directors; determining the number of employees to be employed and the rate of pay for such employees; acting as the representative of the member organizations in supervising taxicabs operating in the confines of LAX; serving as a liaison with the Department of Airports; supervising the employees of ATS; and ensuring the completion of all reports, books and records required by the Department of Airports. The General Manager has the authority to discharge employees of ATS and has exercised this authority. General Manager Bitaraf testified that he has daily contact and meets weekly with the Landside Operations Bureau's Traffic Coordinator.⁸ The Operating Agreement places some limitations on the General Manager's ability to establish employment conditions, such as requiring that ATS abide by the City's Living Wage Ordinance.

In the past year, ATS earned approximately \$1.3 million. ATS' sole source of revenue is from a \$2.50 fee that all taxicabs that pick up passengers at LAX must pay to ATS. When these taxicabs arrive at LAX, they proceed to a parking lot located on Alverson, and pay \$2.50 to an ATS cashier who gives the driver a trip slip indicating to which terminal the driver should go.⁹ Upon arrival at the designated terminal, the driver gives the trip slip to an ATS dispatcher at the terminal. After ensuring that the trip slip is correct, the dispatcher will allow the taxicab into the taxi stand at that terminal, where the driver waits to pick up passengers. Drivers recoup this \$2.50 from passengers in the form of a surcharge on taxicab fares originating from LAX. Of that \$2.50, ATS is allowed to retain \$2.00 to go toward its operating expenses and it remits the other 50 cents from each trip slip to LAX weekly. If ATS collects more money than is required for its operations, its bylaws dictate that ATS deposit the excess into a reserve account that is to be used to offset future expenses or operating deficits; provide for plant improvement;

⁸ The record does not indicate what occurs in these daily interactions or what authority if any the Traffic Coordinator has with respect to ATS' operations.

⁹ The holding lot on Alverson is part of LAX and is owned by the City, which leases it to ATS for a nominal fee of \$1 per year. The lot has several prefabricated trailers on it and ATS uses one of those trailers. Another of the trailers is used for shuttle services which have nothing to do with ATS.

and to provide for improved services. For each month that the balance of the reserve account exceeds \$85,000, ATS must notify the Board of Airport Commission in writing. ATS may request that the City increase the amount of the surcharge, but the City can, and has on several occasions, denied such requests.

C. Budget and Oversight

Each year, the General Manager of ATS prepares a budget that he submits to the Board of Directors for approval. Once approved by the Board, the General Manager submits the budget to the Landside Operations Bureau of the Department of Airports.¹⁰ While General Manager Bitaraf testified that he would have to redo the budget if the Landside Operations Bureau did not approve it, neither the bylaws nor the operating agreement indicate that the budget must be approved by the Landside Operations Bureau. Nor does the record reflect any instance where the budget was not approved by the Landside Operations Bureau. Bitaraf admitted that in the last five years, the Landside Operations Bureau had not requested changes to ATS' budget. ATS is a tax-exempt organization.

For the past five years, ATS has been audited by the City Controller's office. Pursuant to those audits, ATS has been required by the City to change certain practices, such as the payment of Directors for participating in hearings for drivers accused of violating the airport's rules and regulations. The City required ATS' Directors to disgorge payments that they had received for conducting these hearings. As a result of the audits, the City Controller has suggested that ATS take action to improve its operations, such as implementing an automated payment system where drivers could swipe a debit card when they entered the lot instead of paying \$2.50 to a cashier.¹¹ The City Controller also informed ATS that in dealing with an employee's minor injury, that ATS should have filed a workers' compensation report rather than sending the employee

¹⁰ The bylaws require the general manager to submit the proposed budget to both the Board of Directors and the Manager of Landside Operations Bureau at the same time.

¹¹ There is no evidence that ATS has installed such a system.

to a nearby clinic. Up until about five years ago, ATS was charging food truck operators who sold food to drivers in the Alverson lot a fee to park in the lot. When the airport found out about this, it informed ATS that it was prohibited from charging food vendors any money and required that ATS disgorge any previous money that it had received from the vendors.

D. Analysis

The narrow issue presented here is whether ATS is a “political subdivision” of the State of California. If it is, as ATS contends, then the Board does not have jurisdiction over ATS and must dismiss the instant petition. Section 2(2) of the Act reads in pertinent part: “The term ‘employer’ includes any person acting as an agent of an employer, directly or indirectly, but shall not include . . . any State or political subdivision thereof . . .”

While neither the Act nor its legislative history supplies the meaning of the term “political subdivision,” in *NLRB v. Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971), the Supreme Court of the United States adopted the Board’s definition. Thus, an entity is a political subdivision and exempt from the Act’s coverage if it is either: 1) created directly by the state so as to constitute a department or administrative arm of the government; or 2) administered by individuals who are responsible to public officials or to the general electorate. *Id.* at 604-05. The record establishes, and I find, that ATS does not meet either prong of the *Hawkins*’ test.

With respect to the first prong of the *Hawkins*’ test, the evidence does not establish, and neither party argues, that ATS was created directly by the State so as to constitute a department or administrative arm of the government. Rather, ATS argues that it is exempt from Section 2(2) of the Act pursuant to the second prong of the *Hawkins*’ test. Petitioner more specifically contends that ATS is administered by individuals who are responsible to public officials.

The party claiming that an entity is exempt from the Act under the second prong of the Hawkins' test has the burden of establishing that its policy-making officials have 'direct personal accountability' to public officials or the general public. *Cape Girardeau Care Center*, 278 NLRB 1018, 1019 (1986) (citations omitted). In determining whether policy-making officials are personally accountable to public officials, the most important factor examined by the Board is whether the individuals are appointed by, and subject to removal by, public officials. *Research Foundation of the City University of New York*, 337 NLRB 965, 969 (2002). For an entity to be deemed "administered" by individuals responsible to public officials, those individuals must constitute a majority of the board. See *FiveCAP, Inc.*, 331 NLRB 1165 (2000); *Enrichment Services Program*, 325 NLRB 818, 819 (1998).

In the instant case, the manner in which Directors are appointed to or removed from the Board is established solely by ATS' bylaws. Although the City Attorney for LAX dictated what the bylaws would say with respect to membership, the bylaws were ultimately signed and approved by ATS' Board of Directors. Pursuant to the bylaws, public officials can affect ATS' membership and, by extension ATS' Board of Directors, by granting or denying authority for a company or co-op to originate fares at LAX. However, neither the bylaws nor any other written instrument give public officials the right to appoint or remove specific individuals on ATS' Board of Directors. While public officials can choose which companies or co-ops will be members, there is no evidence that any public official can determine who will serve as the president of any ATS member company. By changing its president, any member of ATS could change the makeup of the Board of Directors. There is no evidence that any public official interviewed or took steps to select any particular individual to be on ATS' Board of Directors at the organization's inception in 1991. Nor is there evidence that public officials granted or revoked authorization from any company at that time to influence the makeup of the initial Board of Directors. Rather, the initial Board of Directors was simply made up of the presidents of those entities that already had authority to originate fares at LAX. Moreover, in the nearly 20-year period that ATS has been operating, there

is evidence of only one Director who was effectively removed when the City did not renew his company's franchise. While that Director was replaced by the president of another company that was awarded that franchise, again there is no evidence that any public official interviewed the president of that company or personally selected that person to serve on the Board of Directors. Accordingly, the "selection" by public officials of ATS' Board of Directors is merely ministerial. See *Cape Girardeau Care Center, Inc.*, 278 NLRB 1018, 1018 (1986) (nursing home was not accountable to public officials where county performed mere ministerial act of approving appointment of directors without interviews). But see, *Shelby County Health Care Corp.*, 343 NLRB 346, 360 (2004) (entity exempt from Act where directors were appointed by mayor subject to approval of county commissioners); *Oklahoma Zoological Trust*, 325 NLRB 171, 171 (1997) (entity exempt from Act where all directors were either public officials or appointed by mayor and confirmed by the city council, and trustees were subject to removal by district court); *City of Austell Natural Gas System*, 186 NLRB 280, 280 (1970) (entity that was created by the state and whose directors were appointed by mayor and city council was responsible to public officials and exempt from Act).

The fact that public officials in the instant case have only indirect ministerial authority over the makeup of ATS' Board of Directors is not in itself dispositive. *Rosenberg Library Assn.*, 269 NLRB 1173, 1774 (1984) (based on totality of circumstances, library association was exempt political subdivision even though board of trustees was not appointed, or subjected to removal, by public officials). The Board considers a variety of other factors in determining the extent to which an entity is responsible to public officials. It will be more likely for the Board to find an entity to be a political subdivision if some of the following factors are present: the composition of the entity's board is determined by law as opposed to merely through the entity's governing documents;¹² the entity's budget is subject to approval by public officials;¹³ government

¹² *Research Foundation*, 337 NLRB at 969.

¹³ *Shelby County Health Care Corp.*, 343 NLRB 346, 360 (2004).

officials are involved in the day-to-day operations;¹⁴ meetings of the entity's directors are subject to open meetings laws;¹⁵ its operations are funded by public funds;¹⁶ the entity has the power of eminent domain or subpoena power;¹⁷ the entity's board members receive nominal or no compensation;¹⁸ its employees enjoy the same working conditions and benefits as public employees;¹⁹ and it is exempt from taxes.²⁰

Weighing in favor of finding ATS to be a political subdivision are the facts that Directors receive no compensation and ATS is exempt from state and federal taxes. Moreover, ATS is required by its bylaws to submit reports on an ongoing basis to LAX and to annually submit its budget. Several of the above factors militate against a finding that ATS is a political subdivision, however, including that the composition of ATS' Board is determined by its bylaws as opposed to any state law or regulation. Also, the record contains no evidence to indicate that ATS is subject to open meeting laws; has eminent domain or subpoena power; or that its employees receive the same wages and benefits as public employees.

While ATS asserts in its brief that its budget must be approved by public officials prior to implementation, this is not required by its bylaws. According to Section 6.03(c) of ATS' bylaws, the General Manager is responsible for preparing a proposed budget and presenting it to both the Board of Directors and the Manager of the Landside Operations Bureau. The authority to approve the budget, however, is vested solely with the Board of Directors. While General Manager Bitaraf testified that ATS would have to change its budget if not approved by the Landside Operations Bureau, he offered no specific evidence that this had ever occurred, and admitted that it had not occurred in the past five years. To the extent that he may have believed that approval from Landside Operations Bureau was necessary based on the fact that ATS' contract could be cancelled with 30-

¹⁴ *Id.*

¹⁵ *Oklahoma Zoological Trust*, 325 NLRB 171, 171 (1997).

¹⁶ *Id.*

¹⁷ *City Public Service Board of San Antonio*, 197 NLRB 312, 312 (1972).

¹⁸ *Id.*

¹⁹ *Rosenberg Library Assn.*, 269 NLRB 1173, 1774 (1984).

²⁰ *City of Austell Natural Gas System*, 186 NLRB 280 (1970).

days advance notice, the Board has found such clauses to be routine in government contracts and to have no bearing on political subdivision status. *Charter School Administration Services*, 353 NLRB No. 35, slip op. at 5 n.19 (2008).

To the extent that record reflects daily contact between ATS' General Manager and the Traffic Coordinator for the Landside Operations Bureau, the evidence does not reveal the nature or extent of the daily contact or to what extent, if any, ATS' General Manager is answerable to the Traffic Coordinator. This situation is distinguishable from the facts before the Fourth Circuit in the case relied upon by ATS, *NLRB v. Princeton Memorial Hospital*, 939 F.2d 174 (4th Cir. 1991). In that case, the Fourth Circuit denied enforcement of the Board's order on the ground that a nursing home was a political subdivision. Unlike here, the city's hospital provided personal management services to the nursing homes, helping develop and implement procedures regarding wages, hours and terms and conditions of employment. Moreover, the nursing home's directors were subject to appointment and removal by the board of the city's hospital.

ATS receives 100% of its funding as a result of a City-authorized surcharge that is passed on to passengers who take taxicabs originating from LAX. ATS does not receive this money from the City or other public officials, however. ATS receives the surcharge from taxi drivers that work for members of ATS. To the extent that the City can approve or reject ATS' requests to increase the surcharge, it can affect ATS' revenues. However, the amount of ATS' actual revenue will depend upon the number of taxi trips originating from LAX. Thus, city officials here do not have the same degree of control and oversight as those situations where entities receive their monies directly from public officials who can control their revenues. See *Shelby County Health Care Corp.*, 343 NLRB at 360 (hospital funded by county fees and property taxes whose budget needed to be approved by county commission was political subdivision); *Oklahoma Zoological Trust*, 325 NLRB at 171 (trust was exempt where it was funded almost entirely by sales tax required to submit its expenditures to city council for approval prior to drawing on funds); *Rosenberg Library Assn.*, 269 NLRB at 1173 (library was political subdivision where

75% of its operating budget was derived from city and county taxes and county commissioners determined amount of funding that would be allocated to library).

Finally, I note that unlike many of the cases involving political subdivisions, ATS now performs a function that was previously performed by a private company. Further, the terms of the operating agreement between ATS and the City of Los Angeles Department of Airports expressly disclaims that ATS is an officer, employee or agent of the City and provides that ATS acts as the agent of its members which consists largely of private companies.

VI. CONCLUSION: On the basis of the foregoing and the record as a whole, I find that ATS is an employer within the meaning of Section 2(2) of the Act and that it would effectuate the policies of the Act to assert jurisdiction herein.

Accordingly, I shall direct an election in the following appropriate unit (hereinafter “Unit”):

INCLUDED: All full-time and regular part-time dispatchers, cashiers, and maintenance employees employed by the Employer at its facility located at LAX.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

There are approximately 56 employees in the Unit found appropriate.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. The employees will vote whether or not they wish to be jointly represented for purposes of collective bargaining by **California Public, Professional & Medical Employees Union, Teamsters Local 911**. The date, time, and place of the election will be specified in the notice of election that the Board’s Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on

the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 31 Regional Office, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064-1824, on or before **March 24, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, **www.nlr.gov**,²¹ by mail, by hand or courier delivery, or by facsimile transmission at (310) 235-7420. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the

²¹ To file the eligibility list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 31, 2010**. The request may be filed electronically through the Agency's web site, www.nlr.gov,²² but may not be filed by facsimile.

DATED at Los Angeles, California this 17th day of March, 2010.

/s/ James J. McDermott

James J. McDermott, Regional Director
National Labor Relations Board
Region 31

²² To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.